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Signed and Filed: February 18, 2011

A handwritten signature in dark ink, appearing to read "T. E. Carlson", is written over a horizontal line.

THOMAS E. CARLSON
U.S. Bankruptcy Judge

5 Attorneys for Peacock Gap Properties, LLC

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7 UNITED STATES BANKRUPTCY COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

10 In re
11 PEACOCK GAP PROPERTIES, LLC,
12 Debtor.

Case No. 09-34161 TEC

Chapter 11

**ORDER CONFIRMING DEBTOR'S
SECOND AMENDED PLAN**

Judge: Hon. Thomas E. Carlson
Date: February 18, 2011
Time: 9:30 a.m.
Place: 235 Pine Street, 23rd Floor
San Francisco, California

17 A plan confirmation hearing was held before the Honorable Thomas E. Carlson, United
18 States Bankruptcy Judge, on February 18, 2011 at 9:30 a.m. (the "Confirmation Hearing") to
19 determine whether the Debtor's proposed Second Plan of Reorganization (the "Plan") [Doc. No.
20 182] should be confirmed. Appearances were noted on the record.

21 The Confirmation Hearing, having been duly noticed to all creditors, all interest holders,
22 the Office of the United States Trustee, and all other parties entitled to notice; the Debtor having
23 proven by a preponderance of evidence that the proposed Plan meets all the requirements for
24 confirmation; and objections to confirmation of the Plan having been resolved prior to the
25 Confirmation Hearing:

26 THE COURT FINDS that

27 A. Due and proper notice of the Confirmation Hearing has been given to all parties
28 entitled to notice;

1 B. The Debtor provided “adequate disclosure” within the meaning of Bankruptcy
2 Code § 1125(a) with respect to the Plan and the solicitation of acceptances thereon;
3 C. The Plan has been proposed in good faith and not by any means forbidden by law;
4 D. The Plan complies with the applicable provisions of the Bankruptcy Code;
5 E. The proponent of the Plan has complied with all applicable provisions of the
6 Bankruptcy Code;
7 F. The Plan meets all provisions of 11 U.S.C. § 1129 (a)(1) – (16), except for
8 11 U.S.C. § 1129(a)(8). However, the Plan does not discriminate unfairly, and is fair and
9 equitable, with respect to each class of claims and interests that are impaired but have not accepted
10 the Plan and meets the provisions of 11 U.S.C. § 1129(b);
11 G. As provided by the Plan and the ORDER APPROVING SALE PROCEDURES, INCLUDING
12 OVERBID PROCEDURES IN CONNECTION WITH PROPOSED SALE CONTEMPLATED IN DEBTOR'S FIRST
13 [sic] AMENDED PLAN [Doc. No. 192], no competing bids were submitted for the purchase of
14 substantially all of the Debtor's assets as provided in the Plan;
15 H. The purchase price offered by Peacock Gap Holdings, LLC ("PG Holdings") as set
16 forth in the Plan and Second Amended Disclosure Statement [Doc. No. 183] is the highest and
17 best price offered for the assets ("Purchase Price"). The Purchase Price consists of waiver of an
18 \$8,000,000 secured claim against Debtor, payment of \$531,000 in delinquent property taxes,
19 payment of \$250,000 in cash, waiver of the repayment of a \$150,000 DIP loan facility (to the
20 extent needed to satisfy unpaid administrative expenses), and payment of an additional \$50,000 in
21 cash to the extent needed to fund unpaid administrative expenses;
22 I. Confirmation of the Plan is in the best interests of creditors; and
23 J. As provided in the ORDER APPROVING STIPULATION TO EMPLOY RAJIV PARIKH AS
24 INTERIM MANAGER [Doc. No. 133], the Court has earlier appointed Rajiv Parikh as the interim
25 manager of Debtor's facilities, and as the result of the sale of Debtor's assets Mr. Parikh's
26 employment is no longer necessary.
27 Accordingly, and good cause appearing therefor,
28 IT IS HEREBY ORDERED that

1 1. The Plan is confirmed with the following amendments:
2 a. Debtor shall file its monthly operating reports and remit payment of U.S.
3 Trustee fees for the third and fourth quarters of 2010 by February 25, 2011; and

4 b. Section VII.A. of the Plan is amended to provide as follows:

5 **A. Provisions Regarding Limitation of Liability and**
6 **Discharge of Debtor**

7 None of the Debtors, their respective affiliates, nor any of
8 their respective members, officers, directors, shareholders,
9 employees, and other agents, advisors, and Professionals will have
10 or incur any liability to any Creditor or Interest holder or to any
11 other person for any act or omission in connection with or arising
12 out of the negotiation, preparation, and pursuit of confirmation of
13 the Plan, the approval of the Disclosure Statement, or the
14 confirmation of the Plan, absent gross negligence or willful
15 misconduct. Pursuant to 11 U.S.C. Section 1141(d)(3), the
16 reorganized Debtor is not entitled to a discharge.

17 2. Debtor is deemed to have executed and is authorized to execute and take all steps
18 required to perform under its Asset Purchase Agreement (the "APA") [Doc. No. 185] with PG
19 Holdings for the purchase and sale of substantially all of the Debtor's assets as set forth in the
20 APA (the "Purchased Assets") and the Purchased Assets are hereby transferred to PG Holdings
21 effective 12:00 a.m. February 19, 2011 (the "Transfer Date"). Debtor shall execute any and all
22 documents necessary to effectuate the APA and any of its provisions. As of the Transfer Date, PG
23 Holdings shall be liable for all claims and expenses arising from and entitled to all rights and
24 benefits related to the Purchased Assets and the business as a going-concern.

25 3. The Debtor's California Department of Alcoholic Beverage Control on-sale general
26 eating place license No. 47-425562, issued to it at 333 Biscayne Drive, San Rafael, California, is
27 hereby transferred to PG Holdings effective as of the Transfer Date. All other licenses or permits
28 issued to the Debtor to are hereby transferred to PG Holdings effective as of the Transfer Date.

1 The purchase price for the licenses and permits is included in the Purchase Price.

2 4. To the extent unpaid, PNCEF, LLC's stipulated allowed administrative claim shall
3 be paid in full as an Non-Classified Claim in accordance with the Plan and the parties' stipulation
4 [Doc. No. 178].

5 5. Mr. Parikh's services as Interim Manager shall end as of the Transfer Date.

6 *** END OF ORDER ***

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